



RFP#1313-111312

Request For Proposal

for

FULL OVERHEAD COST ALLOCATION PLAN and OMB A-87

Proposal must be received no later than:

Tuesday, December 11, 2012 @ 11:00 am

Email OR Deliver proposal to the office of:
Jasmine R. Gacusan, Purchasing Manager

PURCHASING@HAYWARD-CA.GOV

777 B Street (3rd Floor)
Hayward, CA 94541

NOTICE IS HEREBY given that the City of Hayward invites sealed proposals for a **Full Overhead Cost Allocation Plan and OMB A-87**. Each proposal shall be in accordance with the general provisions for purchase of work and services on file in the office of the Purchasing Department, 777 B Street, Hayward, CA 94541, where copies of said conditions and specifications may be inspected or obtained. All proposals must be in the format specified, enclosed in a sealed envelope and clearly identified with RFP title, number, company name and due date.

Deliver proposals via email to PURCHASING@HAYWARD-CA.GOV or to the Purchasing Department at the address indicated above on or before **Tuesday, December 11, 2012 @ 11:00 am**. It is the sole responsibility of the proposing firm to ensure that proposals are received prior to the closing time as late bids will not be accepted and will be returned unopened.

BACKGROUND INFORMATION

The City of Hayward, California (the City) is located in Alameda County and is known as the “Heart of the Bay” because of its central and convenient location to San Francisco, Oakland, and San Jose. It is served by an extensive network of freeways and bus lines and has two BART stations and an Amtrak station. Currently, it is estimated that there are 148,000 residents of the City of Hayward with the City growing by approximately three percent since 2000.

The City is governed by a City Council / City Manager form of government. The City Council is made up of six members plus a mayor that serves as the head of the City Council. The City Council appoints a City Manager to oversee the City’s twelve departments.

Background Summary	
Population	144,186
Number of Employees	790.45
Annual City Operating Budget (including General Fund)	\$239,923 M
Annual General Fund Budget	\$123,524 M
Annual City Capital Budget	\$106 M
Fiscal Year	July 1 – June 30
Number of Departments	14
Governance Structure	City Council / City Manager
Utility Customers	34,000
MOUs	7
Housing Units	48,000

Additional information regarding the City of Hayward may be obtained at:
<http://www.hayward-ca.gov/about.shtm>

SCHEDULE

Event	Date/Time
Issue Date of RFP	Tuesday, Nov 13, 2012
Last Day for Questions/Clarifications	Tuesday, Nov 20, 2012 @ 11:00 am
Deadline for Receipt of Proposal	Tuesday, Dec 11, 2012 @ 11:00 am
Review Period of Proposals	Tuesday – Friday, Dec 11 – 14, 2012
Interview (finalist)	Monday – Wednesday, Dec 17 - 19, 2012
Vendor Selection Date	Thursday, Dec 20, 2012
Recommendation to Counsel	Tuesday, Jan 15, 2013
Work Commence	Wednesday, Jan 16, 2013
Completion of Evaluation of	
current Cost Allocation Charges	Friday, April 5, 2013
Recommended Changes	
presented to City Council for Approval	Tuesday, April 23, 2013

CONTACTS

Any administrative questions regarding bidding procedures should be directed to:

Jasmine R. Gacusan, Purchasing Mgr(510) 583-4802; Jasmine.Gacusan@Hayward-ca.gov

Maria Carrillo, Purchasing Assistant (510) 583-4800; Maria.Carrillo@Hayward-ca.gov.

Questions relating to the project management may be directed to:

Tracy Vesely, Director of Finance (510)583-4007; Tracy.Vesely@Hayward-ca.gov

Nan Barton, Financial Analyst (510) 583-4012; Nan.Barton@Hayward-ca.gov

LAST DAY FOR QUESTIONS

The last day to submit questions to the Purchasing Department is **Tuesday, November 20, 2012 @ 11:00 am.** This will allow sufficient time for any addenda to be issued by the City to all bidders. All questions must be submitted in writing via email to the Purchasing Department at PURCHASING@HAYWARD-CA.GOV

AWARD OF CONTRACT

The City reserves the right to reject any and all proposals, to contract work with whomever and in whatever manner the City decides, to abandon the work entirely and to waive any informality or non substantive irregularity as the interest of the City may require and to be the sole judge of selection process. The City also reserves the right to negotiate separately in any manner to serve the best interest of the City. The City retains the right at its sole discretion to select a successful vendor.

SELECTION PROCESS

A review committee will evaluate all responses to the RFP that meet the submittal requirements and deadline. Submittals that do not meet the requirement or deadline will not be considered. The review committee will rank the proposals and arrange interviews with the finalist prior to selection.

SELECTION CRITERIA

Proposals will be evaluated based on the following criteria:

- Thoroughness and understanding of the tasks to be completed
- Background and experience in organizational analysis evaluation
- Firm's expertise and overall experience of personnel assigned to the work
- Time required to accomplish the requested services
- Responsiveness to requirements of the project
- Public sector experience in municipal setting conducting similar studies
- Costs

DISCRETION AND LIABILITY WAIVER

The City reserves the right to exercise discretion and apply its judgment with respect to all proposals submitted.

The City reserves the right to reject all proposals, either in part or in its entirety, or to requests and obtain, from one or more of the consulting firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals.

The City may elect to award a contract in multiple phases, as is deemed to be in the City's best interest. Should the City award projects in phases, the City reserves the right to award the phases to the same firm.

The consultant, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP. Although, it is the City's intent to choose only a small number of most qualified consulting teams to interview with the City, the City reserves the right to choose any number of qualified finalists.

This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP or to procure or contract for work.

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review.

The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises the RFP, all interested firms will be notified using email.

MANDATORY CONTENT AND SEQUENCE OF SUBMITTAL

I. Submission Requirements and Instructions

All bidder requirements in this section are **mandatory**. The City reserves the right to waive any non-material variation.

- a) Proposers may submit response via email ONLY to this address:
PURCHASING@HAYWARD-CA.GOV

OR

Submit one (1) UNBOUND original proposal package AND five (5) complete BOUND copies for each proposal, under sealed envelope, by mail or hand-delivery to the address shown on the front. Each submission must be marked on the outside with the Company's name and the name of the project. Postmarks are NOT acceptable.

Any bid received after the schedule closing time for receipt of bids will be returned to the bidder unopened.

- b) Proposals and required attachments shall be submitted as specified and must be signed by officials authorized to bind the bidder to the provisions.

II. Proposal Outline and Content

Assemble and submit each proposal in the order below and address the required content/questions. The order in which items are presented is important, as proposal evaluators will follow this order:

- a) Table of Contents
- b) Cover Sheet. This sheet will serve as the cover of your proposal.
- c) One-Page Project Summary. Begin with a brief summary of the proposal. This summary should concisely describe the project, its goals, and the proposed plan of implementation.
- d) Company Description/Capability (not to exceed 3 pages)
- Brief history of the company that includes the date of establishment and examples of relevant prior RFP/bids and current customers of similar attributes to the City of Hayward.
 - Describe your experience and capacity to manage projects of the size and scope proposed.

- e) Informational content
 - A list of project team and their professional profile/credentials/experience.
 - Specific assignment of project team
- f) References (minimum 5) specifically in local/municipal/county/state agencies
 - a) Name of agency
 - b) Contact name to include: title, phone number and email
 - c) Population of jurisdiction
 - d) Number of employees
 - e) Project start and completion date
 - f) Brief summary of project
- g) Cost
 - Present a specific “not to exceed” fixed fee, including associated fees (i.e. printing costs, attendance at meetings, travel). A requested payment schedule should accompany the work schedule.
- h) Outline of Services (refer to Scope of Work)

The City reserves the right to require the submittal of additional information that supplements or explains proposal materials.

SCOPE OF WORK

Project tasks shall include, but are not limited to:

- Preparation of a Full Overhead Cost Allocation Plan and OMB A-87.

Consultant will:

- Work with City staff to define the purpose, uses and goals for an overhead cost allocation plan, ensuring that the development of the plan will be both accurate and appropriate for City's needs and in compliance with Generally Accepted Accounting Principles (GAAP) and the principles of OMB A-87 of treating costs in an equitable and fair manner;
- Consultant shall work with City staff in developing service provisions, cost categories and allocation criteria for current and future programs;
- Consultant shall provide a Draft Overhead Cost Allocation Plan and participate in the presentation of the Plan to select City staff. Consultant will also provide documentation of comments and concerns expressed by staff in connection with Consultant's performance of the Services; and
- Consultant shall prepare the Final Plan and provide five bound copies and one unbound copy to City. Further, the Cost Allocation Plan shall be made available to City in electronic format.

PROJECT PHASE

Step 1: Project Introductory Meeting

To ensure a successful start, the City Of Hayward recommends holding an introductory meeting with key staff members that include both general fund departments and non-general fund departments. Consultant will look to city staff for guidance for the purpose and content of the meeting and for a list of invitees. The consultant considers an initial meeting designed to review the project's overall goals and objectives vital to a successful outcome. Agenda items for the introductory meeting could include:

- An explanation of the cost plan process
- The purpose of a full cost study
- How other cities use full costing
- Example summary reports produced by the project
- Questions and answers
- Etc.

Step 2: Data Review

As soon as possible, lists of basic data requirements will be developed. They include: lists of selected staff salary levels, benefit cost detail, operational budgets, transaction statistics, etc. The consultant will work with the city to develop and gather needed data in the most efficient way. Once this basic data is acquired, the cost plan and rate structures will be developed.

Step 3: Cost Allocation Plan Development

a) **Central Service Department Interview Preparation:** After the central city financial and operational data is gathered, interview forms will be completed. Interview forms are developed with questions related to staffing lists, actual salary level, staff titles, department expenditure report detail, development of pre-interview questions, etc. The completion of interview forms prior to the City department interviews will facilitate 1) a professionally conducted streamlined interview, and 2) a thorough and complete understanding of city processes.

b) **Central Service Departmental Interviews:** Central service or “allocating departments” are interviewed to ensure that costs are spread in a manner that reflects: the work that was done; the departments that benefited, and which allocation bases are proper - all key principles stated throughout OMB A-87. While the consultant will bring a background of knowledge and ideas to these interviews, it is also important to listen to department staff that understands more about their particular area of expertise. Examples of departments interviewed will include building maintenance, accounting, management and budget, purchasing, etc. In addition, any internal services funds (ISF) that charge for services will be interviewed with emphasis on ensuring indirect costs are allocated accurately so that they can be included in the full cost analysis when calculating ISF rates.

c) **Department Personnel Staff Analysis:** Departmental Staffing Analysis (PSA) worksheets will be completed utilizing information gathered in the initial interviews. The PSA provides a basis for the distribution of departmental costs into departmental functions. During our interviews with central service departments, we will discuss each person’s assignments and duties. Using timesheets, assignments, or interview notes, we will determine what percentage of each person’s time should be divided into departmental functions. This information will be entered into the PSA worksheets to define departmental functions. Once staff members and their corresponding salaries are distributed to functions, other department costs, such as materials and supplies, will also be distributed into the same functions or cost pools. This process takes a departmental budget unit and breaks it into functional cost pools, which can then be allocated throughout the city using a meaningful allocation base.

d) **Departmental Cost Distribution:** This schedule allocates the departmental costs of the central service department and any “incoming costs” being allocated from other central service

departments. This detail facilitates review, explanation and audit, leading to reduced errors and re-runs of reports.

e) **Developing Allocation Bases:** After the departmental functions are created, and costs are distributed across functions, a separate meaningful allocation base will be selected that best reflects the benefit each department in the city receives from the various services. For example, in accounting, once the payroll functional cost pool is developed, an allocation base will be selected to distribute the payroll cost to all departments that benefit from the payroll service. Using OMB A-87 as a guide, the allocation base must reflect a connection between the service provided and the service received. An example for payroll could be the number of paychecks issued per department during the fiscal year – in other words – the more paychecks the department received, the more payroll cost is allocated.

f) **Cost Allocation Management Reports:** After each central service department is interviewed, departmental costs are distributed to functional cost pools, and each cost pool is given an allocation base, the cost plan is ready to be produced.

DELIVERABLES

Full Cost Allocation Plan (CAP)

- Five bound copies
- One unbound copy
- Electronic copy (PDF)
- Copies of working papers
- Copies of CAP files (in MS Office format).

SAMPLE SCHEDULE

Since no firm discussion has been held regarding the City's desired schedule, the following example schedule is provided for proposal purposes. The schedule is an illustration of our step-by-step process that could be tied to the RFP stated goal of a project start date of January 16, 2013 and a completion date of April 5, 2013. This schedule can be adjusted to meet the city's needs once the contract is signed and the project starts. Each broad step in the process is described below. The consultant will work with the City to fine-tune the schedule to meet the City's goals and objectives:

Week One and Two:

- 1) Meet with City management team and department heads to introduce study.
- 2) Obtain budgets, salary levels, staff lists, etc. to begin the cost plan.

- 3) Begin meetings with departments
 Explain the data needs for the study
 Hand out the already developed data sheets
- 4) Begin development of the cost allocation plan by entering basic.

Week Three-Four:

- 1) Obtain any feedback from departments, continue communication, and answer questions.

Week Five:

- 1) Consultant will provide a draft of the cost allocation plan back to City staff for review.
- 2) Consultant will update data as needed.

Week Six-Seven:

- 1) Staff changes and comments will be used to update cost plan and user fee data.
- 2) Consultants will update data as needed.

Week Eight:

- 1) Changes and comments will be addressed and a second draft of the user fee and a final draft of the cost plan will be developed.
- 2) Consultant will update data as needed.

Meetings with City Management:

- 1) Management reports will be developed for each department in the study. The cost plan will be finalized. Meetings, will be held as scheduled by the City and the consultant.

Updates and Corrections:

- 1) Any changes as requested during the management meetings will be made and final reports will be delivered.

****THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE PROPOSAL FORM****

THE REPRESENTATIVES MADE HEREIN ARE MADE UNDER PENALTY OF PERJURY

NO PROPOSAL IS VALID UNLESS SUBMITTED ON THIS FORM AND SIGNED BY AUTHORIZED
AGENT FOR YOUR COMPANY.

SUBMITTED BY:

COMPANY NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE: _____

EMAIL: _____

SIGNATURE: _____
(Authorized Agent)

NAME: _____
(Please Print)

TITLE: _____

DATE: _____

NOTE: If proposer is a corporation, the legal name of the corporation shall be set forth above, together with the signature of authorized officers or agents; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partnership; and if bidder is an individual, his signature shall be placed above.

SAMPLE CONTRACT

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND
(NAME OF Consultant)_____

THIS AGREEMENT, dated for convenience this ____ day of _____, 20____, is by and between (name of consultant)_____, a [insert here a description of the capacity of the contractor such as a sole proprietorship, a California corporation, or a limited partnership]_____,
_____ ("Consultant") and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services which will be required by this agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Consultant and the City agree as follows:

AGREEMENT:

Scope of Service. Subject to the terms and conditions set forth in this agreement, Consultant shall provide to the City, the services described in Exhibit _____. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit _____.

Compensation. City hereby agrees to pay Consultant as provided in Exhibit _____. Total compensation for Consultant's services and expenses incurred pursuant to this agreement shall not exceed the sum of \$_____.

Effective Date and Term. The effective date of this agreement is _____] and it shall terminate no later than _____.

Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.

Billings. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief

description of any costs incurred, and the Consultant's signature. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided above.

Advice and Status Reporting. Consultant shall provide the City with timely advice of all significant developments arising during performance of its services hereunder orally or in writing.

Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm, [Name, Name, and Name]_____. The primary provider of the services called for by this agreement shall be **[insert here the name of the individual who will provide the services to the City]**_____, who shall not be replaced without the written consent of City's Director of Finance.

Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

Assignment and Subcontracting. It is recognized by the parties hereto that a substantial inducement to City for entering into this agreement was, and is, the professional reputation and competence of Consultant. Neither this agreement nor any interest therein may be assigned by Consultant without the prior written approval of City's Director of Finance. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Director of Finance.

Insurance. On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.
- (b) Commercial General and Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one

million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
- (iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
- (iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.
- (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
- (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

- (vii) The policy must contain a cross liability or severability of interests clause.
 - (viii) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 - (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
 - (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than A:VII.
 - (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible shall not exceed \$100,000 per claim.
 - (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
 - (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
 - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 - 1. The retroactive date of the policy must be shown and must be before the date of the agreement.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
 - 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.

4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

- (d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Consultant may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
 - (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
 - (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
 - (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.

Indemnification - Consultant's Responsibility.

- (a) It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work.
- (b) Acceptance by City of the work performed under this agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is

further understood and agreed that Consultant is apprised of the scope of the work to be performed under this agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.

- (c) Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold harmless City, and its officers, employees, agents, and volunteers, from and against all claims, demands, costs, or liability arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents during the performance this Agreement, or from any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by the negligence, reckless, or willful misconduct of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, excepting only liability arising from the sole negligence, active negligence, or intentional misconduct of City, its officers, employees, agents, and volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and shall keep in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

Nondiscriminatory Employment Practices. In the performance of this agreement, Consultant agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7, Nondiscriminatory Employment Practices by City Contractors, a summary of which is attached hereto as Exhibit B.

Termination. This agreement may be cancelled at any time by the City for its convenience upon written notification to Consultant. In the event of termination, the Consultant shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the City may condition payment of such compensation upon Consultant's delivery to the City of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this agreement.

Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant: (Consultant Name)_____

(Address)_____

To the City: City Manager

777 B Street, 4th Floor

Hayward, CA 94541-5007